

Ms. Tierney

19076

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-194610.2

DATE: August 10, 1981

MATTER OF: Andy Electric Company -
Reconsideration

DIGEST:

Contracting officer who suspected mistake in bid due to disparity between other bids and Government estimate, but who reasonably had no suspicion of error in Government estimate, properly performed his verification duty by informing bidder of disparity. Moreover, acceptance of bid does not constitute unconscionable contract because Government did not realize that performance of contract at quoted bid price would result in "getting something for nothing."

Andy Electric Company (Andy) requests reconsideration of our decision of April 1, 1980, 80-1 CPD 242, in which we denied its request for reformation of a contract due to a mistake in bid discovered after award of the contract.

In that decision, we held that a contracting officer who reasonably had no suspicion of a mistake in the Government estimate properly performed his verification duty by informing the bidder of the discrepancy between its bid and both the Government estimate and competitive bids. Andy contends that this decision is erroneous since the contracting officer had actual knowledge of the mistaken estimate, but failed to provide Andy with the correct figure when requesting verification of the low bid. After careful consideration of the additional information submitted by Andy, and upon reexamination of the record, we conclude that an increase in contract price is not justified and affirm our previous decision.

Andy contends that the contracting officer was aware of the mistake in the Government estimate when requesting verification since an amendment to the solicitation changing the electrical wiring requirements greatly increased the contract price and made the original Government estimate obsolete. Andy therefore maintains that the contracting officer's failure to inform Andy of the complete basis for his suspicion that a mistake in

[Request for Reconsideration]
~~217834~~ **116049**

bid had been made constitutes an improper verification request.

The general rule applicable to a mistake in bid discovered after award is that the bidder bears sole responsibility for preparation of the bid, and unless the mistake is mutual or the contracting officer was on actual or constructive notice of the error prior to award, acceptance of the bid consummates a valid and binding contract. Bostrom Bergen Metal Products, B-199290, July 22, 1980, 80-2 CPD 61; Ohiocraft Printing, Inc., B-194056, February 22, 1979, 79-1 CPD 127.

In this case, the contracting officer clearly was on constructive notice of the possibility of a mistake in bid, based on the disparity between Andy's bid, the Government estimate and the competitive bids. The contracting officer properly requested that Andy verify its low bid prior to award of the contract. Proper verification requires not only confirmation of the bid, but also that the contracting officer apprise the bidder of the mistake that it suspected, and the basis for such suspicion. Los Angeles Chemical Co., 58 Comp. Gen. 293 (1979), 79-1 CPD 114; Bostrom Bergen Metal Products, supra.

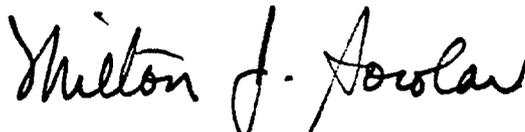
At the time of bid opening, the only reasonable basis the contracting officer had for suspecting a mistake in bid was the disparity between Andy's bid, the Government estimate and the other bids submitted. Although the contracting officer was aware that the amendment to the solicitation modified the electrical wiring requirements, the record does not indicate that the contracting officer was also aware that the amendment necessitated a revision of the Government estimate. Rather, the record reveals that neither the contracting officer nor Andy realized the impact of the amendment on the contract cost, since both parties failed to incorporate the increased cost into their computations. Since the contracting officer brought the disparity between the Government estimate and the bids to the attention of Andy, thus affording Andy the opportunity to carefully review its bid, we conclude that the verification request was properly executed.

As noted in our previous decision, estimates merely serve as guidelines to contracting parties and when a great discrepancy exists between a bid and an estimate, the estimate further serves to alert the contracting officer of the possibility of error.

Once the contracting officer suspects a mistake in bid and properly executes his verification duty, the burden falls upon the bidder to review the bid and ensure that its bid computations are correct. Atlas Builders, Inc., B-186959, August 30, 1976, 76-2 CPD 204. The subsequent acceptance of a verified bid consummates a valid and binding contract. Ohiocraft Printing, Inc., supra; Frank Black, Jr., Incorporated, B-191647, June 26, 1978, 78-1 CPD 463. In this case, Andy was given the opportunity to review its bid and determine whether it made an error. How a bidder chooses to use information in deciding the extent to which it will conduct a review of its bid is a matter of judgment with concurrent risks. Andy Electric Company, B-194610, April 1, 1980, 80-1 CPD 242.

The only remaining basis upon which relief may be granted is if, despite verification, the mistake in bid was so gross that the contracting officer knew that the Government was "obviously getting something for nothing." Porta-Kamp Manufacturing Company, Inc., 54 Comp. Gen. 545 (1974), 74-2 CPD 393. As noted above, the contracting officer was unaware of the erroneous Government estimate at both the time of verification and time of award and, therefore, it cannot be said that the Government realized it would be getting something for nothing.

Accordingly, the prior decision is affirmed.



Acting Comptroller General
of the United States



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-194610.2

August 10, 1981

The Honorable Wm. L. Dickinson
House of Representatives

Dear Mr. Dickinson:

We refer to your interest in the protest of Andy Electric Company concerning contract No. DACA21-77-C-0062 issued by the United States Army Corps of Engineers.

Andy Electric Company requested reconsideration of our decision B-194610, April 1, 1980. By decision of today, copy enclosed, we have affirmed our prior decision.

Sincerely yours,

A handwritten signature in black ink that reads "Milton J. Fowler".

Acting Comptroller General
of the United States

Enclosure



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-194610.2

August 10, 1981

The Honorable Donald W. Stewart
United States Senator
Suite 818, Arrow Building
474 South Court Street
Montgomery, Alabama 36104

Dear Senator Stewart:

We refer to your interest in the protest of Andy Electric Company concerning contract No. DACA21-77-C-0062 issued by the United States Army Corps of Engineers.

Andy Electric Company requested reconsideration of our decision B-194610, April 1, 1980. By decision of today, copy enclosed, we have affirmed our prior decision.

Sincerely yours,

A handwritten signature in cursive script that reads "Milton J. Fowler".

Acting Comptroller General
of the United States

Enclosure



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-194610.2

August 10, 1981

The Honorable Howell Heflin
United States Senate

Dear Senator Heflin:

We refer to your interest in the protest of Andy Electric Company concerning contract No. DACA21-77-C-0062 issued by the United States Army Corps of Engineers.

Andy Electric Company requested reconsideration of our decision B-194610, April 1, 1980. By decision of today, copy enclosed, we have affirmed our prior decision.

Sincerely yours,

A handwritten signature in cursive script that reads "Milton J. Fowler".

Acting Comptroller General
of the United States

Enclosure